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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RHONDA JEAN DYAS, Petitioner, v. WARDEN SUSAN POOLE, Respondent.	NO. CV-97-7530-HLH (AN) TRAVERSE OF ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

On the Traverse:
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INTRODUCTION

Petitioner, Rhonda Jean Dyas, brought this federal habeas corpus petition because she was convicted in violation of the federal Constitution. Ms. Dyas is currently serving a sentence of 25 years to life, pursuant to a conviction of first degree murder. For no good reason, Ms. Dyas was shackled throughout her trial, and this robbed her of the presumption of innocence afforded by the Fourteenth Amendment's Due Process Clause. In addition to being shackled throughout her trial inside the courtroom, Ms. Dyas was taken in shackles to the courtroom where she was tried, through the busy main courthouse hallway, which was filled with waiting jurors.

Ms. Dyas' conviction was upheld on direct appeal in the Second District Court of Appeal and a petition for review was denied by the California Supreme Court. The Court of Appeal ruled that it was error to shackle her, but that the error was "harmless" because there was no showing that jurors could have seen the shackles. Before this Court, the State does not claim that Ms. Dyas was properly shackled. Rather, the State again contends that the error was harmless. However, in so arguing, the State ignores the additional and compelling evidence introduced on habeas corpus.

Ms. Dyas filed petitions for writs of habeas corpus in Riverside County Superior Court, in the Court of Appeal for the State of California, in the California Supreme Court, and in this Court. In her state court habeas corpus petitions and in her federal petition, Ms. Dyas presented declarations showing that she was shackled in plain view of jurors. When it filed its Answer in this Court, the State did not introduce any declarations or other evidence to rebut this fact, and this Court must, therefore, accept the uncontroverted fact that jurors could see the shackles.

In opposing this Petition, the State also argues that this Court must defer to the rulings of the state courts and deny relief. But this Court has an obligation to apply federal law to the uncontroverted facts. Under clear federal law, Ms. Dyas is entitled to relief, and she should receive a new trial at which she is truly afforded the presumption of innocence.

STATEMENT OF FACTS

Rhonda Dyas was tried in Riverside County in Department Seven of the Riverside Country Courthouse with her co-defendant, Plummer Williams, Jr. The trial began on April 15, 1991 and lasted through April 23, 1991. On May 2, 1991, Petitioner Rhonda Dyas was found guilty of violating California Penal Code Sections 187 and 211. She was sentenced to 25 years to life for the conviction of first degree murder and given a concurrent sentence of 4 years for the robbery. See Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus and Exhibits, filed with this Court, ("Memorandum"), pp. 3-4. The robbery conviction was later struck down by the Court of Appeal. Memorandum, Exhibit B-1 at 95-97. Throughout her trial, Rhonda Dyas was shackled at the ankles while in court. Memorandum at 4. The trial judge stated that given the severity of the charges against the accused, he believed that it was appropriate that she be shackled throughout the trial. Memorandum, Exhibit C at 141-142. Rhonda Dyas had no history of violence or previous escapes. She had not indicated by words or action any intention to disrupt the proceedings or attempt to escape while in the courthouse. Memorandum at 4. The Court of Appeal later found that Ms. Dyas should not have been shackled. Memorandum, Exhibit B-1 at 90-94.

Each day of her trial, Ms. Dyas was brought through the main courthouse hallway shackled at the ankles, waist and wrists. This hallway was the main access to courtrooms in the courthouse. The hallway was used by witnesses, attorneys, the general public and jurors. Memorandum, Exhibits B-5, B-5 at 118-123. The hallway was lined with benches where people awaiting access to the courtrooms would sit until they were allowed to enter the courtroom. Often jurors would wait on these benches prior to being allowed to enter the courtroom where they were serving. Id.

Because of the way she was brought into the courthouse each day, jurors in Ms. Dyas' case had numerous opportunities to see her shackled both inside and outside the courtroom. Prior to the start of the trial, Ms. Dyas' trial attorney raised the issue of her being shackled before the trial court, and he noted that she was brought to the courtroom in

shackles before waiting jurors. Memorandum, Exhibit C at 139-141. Before the jurors were even assembled in the courtroom, the trial judge stated his ex ante "impression," based on the configuration of the courtroom, that he didn't "think the leg restraints are so visible that they [would] come to the attention of the jury." Id. The trial judge never addressed the issue of how petitioner was brought into the courtroom before the start of trial proceedings and, of course, the trial court's assessment occurred even before jurors were seated.

On direct appeal to the California Court of Appeal, Ms. Dyas raised the shackling issue. The Court of Appeal held that shackling Ms. Dyas was error. Memorandum, Exhibit B-1 at 91. However, it considered only the pretrial statement of the trial judge, and found that the error appeared harmless. Id. at 93. According to the Court of Appeal, there was no affirmative evidence that jurors in fact saw the shackles.

That affirmative evidence was presented on habeas corpus. In her State habeas corpus petitions, Ms. Dyas presented compelling evidence that the shackles were visible to jurors both inside and outside the courtroom. Memorandum, Exhibits B-4, B-5 at 118-123. Despite this evidence, Ms. Dyas' petitions were summarily denied by the state courts. The California Supreme Court denied the petition in a postcard denial without comment on September 24, 1997. Memorandum, Exhibit A at 24.

On October 9, 1997, Ms. Dyas filed her petition in United States District Court, alleging that she was denied her right to a fair trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, when she was shackled before jurors. Her federal habeas corpus petition contains exactly the same evidence that was presented to the state courts. That evidence shows that jurors saw her shackles.

In its Answer to the federal petition, Respondent alleges that under the amendments to 28 U.S.C. §2254 made as part of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Ms. Dyas is not entitled to relief because the standard of review for state court convictions embodied in AEDPA is deferential. See generally, Answer to Petition for Writ of Habeas Corpus, Memorandum of Points and Authorities in Support of Answer to Petition for Writ of Habeas Corpus, ("Answer"). However, Respondent does not contest

the fact the Ms. Dyas was shackled throughout her trial, or that the California Court of Appeal found that shackling her was an abuse of discretion. Critically, other than pointing to the judge's ex ante assessment, **the State has offered nothing to contradict the evidence presented in the petition that jurors saw Ms. Dyas in shackles both inside and outside the courtroom.** Id. Therefore, the State has not affirmatively disputed the fact that jurors did see Ms. Dyas in shackles. Nor does the State contest that shackling Ms. Dyas was error. Under these undisputed facts and under clear federal law, Ms. Dyas is entitled to relief.

REPLY ARGUMENT

MS. DYAS' PETITION SHOULD BE GRANTED BECAUSE THE STATE COURTS' FINDINGS OF HARMLESS ERROR ARE CONTRARY TO FEDERAL LAW AND ARE UNREASONABLE APPLICATIONS OF FEDERAL LAW.

A. After The AEDPA, A Petition Should Be Granted If The State Court's Findings Are Contrary To Federal Law Or Are Unreasonable Applications Of Federal Law.

Respondent correctly points out that the AEDPA, which amends 28 U.S.C. §2254, applies to this case. Ms. Dyas' petition for a writ of habeas corpus was filed after the effective date of the Act and, therefore, is governed by the amendments contained within the Act. See generally, Lindh v. Murphy, 117 S.Ct. 2059 (1997) (holding that the AEDPA does not apply retroactively in non-death penalty cases filed under 28 U.S.C. §2254).

The relevant provisions of AEDPA, as they pertain to Ms. Dyas' petition, are now contained in the amended version of 28 U.S.C. §2254(d), which states,

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim --
>
> (1) resulted in a decision that was contrary to, or involved an

> unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. §2254(d)(1)-(2). The State argues that 28 U.S.C. §2254(d) sets forth a more deferential standard of review than under previous law. See Answer, pp 14-16. However, deference does not mean unsearching adherence. This Court must still determine whether a state court's adjudication on the merits is either "contrary to" or "an unreasonable application" of federal law, or is an "unreasonable determination of the facts."

At one time, the exact contours of the new AEDPA standard were in dispute. See Mitchell v. Prunty, 107 F.3d 1337, 1340 (9th Cir.), cert. denied, 108 S. Ct. 295 (1997) (noting that the contours of the meaning of "unreasonable" are still being debated); Harpster v. Ohio, 128 F.3d 322, 326-27 (6th Cir. 1997)(noting the difference in approaches taken by the Fifth and Seventh Circuits on one hand, and the First Circuit on the other). After the decision in Mitchell, this Circuit adopted a mixture of the approaches taken by the Fifth and Seventh Circuits. See Jeffries v. Wood, 114 F.3d 1484, 1499-1500 (9th Cir.), cert. denied, 118 S. Ct. 586 (1997) (citing with approval the approach taken in Lindh v. Murphy, 96 F.3d 856 (7th Cir. 1996), rev'd on other grounds, 117 S. Ct. 2059 (1997) and Drinkard v. Johnson, 97 F.3d 751 (5th Cir. 1996), cert. denied, 117 S. Ct. 1114 (1997)). According to Jeffries, state court conclusions of law must be examined de novo. Jeffries, 114 F.3d at 1500. This is because Congress did not intend to "delegate either interpretive or executive power to the state courts;" rather, "when a state court addresses a legal question, it is the law 'as determined by the Supreme Court of the United States' that prevails." Lindh, 96 F.3d at 868-869. As such, contrary to the contention implied by the State, a federal court does not merely accept any and all conclusions and applications of law made by state courts. The AEDPA does not "purport to limit the federal courts' independent interpretive authority with respect to federal questions," as the State implies. Id. at 869; Jeffries, 114 F.3d at

1500-1501 (reviewing a state court's determination of federal question of law and facts).

Similarly, when reviewing factual determinations, deference should be given to state court determinations unless the court proceeding "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence." Jeffries, at 1500. "Certainly, a state court factual determination is unreasonable if it is 'so clearly incorrect that it would not be debatable among reasonable jurists.'" Id. (quoting Drinkard, 97 F.3d at 769). However, for factual determinations that are a matter of degree or "more debatable factual determinations, 'the care with which the state court considered the subject' may be important. 'A responsible, thoughtful answer reached after a full opportunity to litigate is adequate to support the judgment.'" Jeffries, 114 F.3d at 1500 (quoting Lindh, 96 F.3d at 871); see also Mitchell v. Prunty, 107 F.3d 1337, 1340 (9th Cir. 1997) (noting that because the state court devoted just over one page to a sufficiency of the evidence claim, it was no more than a perfunctory look). The more debatable factual determinations referred to in Jeffries may also be classified as mixed questions of law and fact. See Harpster v. Ohio, 128 F.3d 322, 326 (6th Cir. 1997).

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B. Shackling A Defendant When Not Necessary To Protect An Essential Governmental Interest Violates A Defendant's Right To A Fair Trial Under The Due Process Clause.

The Supreme Court has clearly established that shackling a defendant during trial is so inherently prejudicial that it is only permissible as a last resort to protect an essential government interest. Illinois v. Allen, 397 U.S. 337, 344 [90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353, 359] (1970); Holbrook v. Flynn, 475 U.S. 560, 568-69 [106 S. Ct. 1340, 1345-46, 89 L.Ed. 2d 525, 534] (1986). In determining whether a defendant was inherently prejudiced by a court's action, the fundamental question is whether "an unacceptable risk is presented of impermissible factors coming into play." Estelle v. Williams, 425 U.S. 501, 505 [96 S. Ct. 1691, 1693, 48 L. Ed. 2d 126, 131] (1976) (holding that the state may not compel the accused to wear identifiable prison clothes at trial); Holbrook v. Flynn, 475 U.S. at 569-71 [106 S. Ct. at 1346-47, 89 L. Ed. 2d at 535-36] (holding that the presence of additional security officers is not inherently prejudicial the way prison clothes and shackles may be). Furthermore, the risk of prejudice is so great that it is not necessary that jurors actually articulate that they are aware of a prejudicial effect; jurors may not be fully aware of how they are affected by seeing the accused in shackles. Holbrook, 475 U.S. at 570 [106 S. Ct. at 1346, 89 L. Ed. 2d at 535-36].

In this case, the California Court of Appeal found that there was no legitimate reason to shackle Ms. Dyas. The State had, in fact, conceded this point on direct appeal. See Memorandum, Exhibit B-1 at 91. In its Answer, the State does not claim that Ms. Dyas was properly shackled. In a footnote, the State points to cases upholding the shackling of certain obstreperous defendants. See Answer at p. 16 n.16. Yet, in instances where the Supreme Court has upheld shackling, the Court has found that inherent prejudice was outweighed by an essential government interest; there was some important reason for the

action taken by the trial court, unlike the case at hand.[1] Shackling an accused without reason is more like forcing the accused to wear prison clothes during trial, which the Supreme Court has held to be unconstitutional. See Holbrook, 475 U.S. at 568-69 [106 S. Ct. at 1345-46, 89 L. Ed. 2d at 534-35]; Estelle v. Williams 425 U.S. 501, 504-06 [96 S. Ct. 1691, 48 L. Ed. 2d 126] (1976). Absent sufficient justification, forcing a defendant to wear prison clothes or shackles only serves to draw the jury's attention to the fact that the accused is in custody, and is somehow different from the jurors. Holbrook, 475 U.S. at 569 [106 S. Ct. at 1346, 89 L. Ed. 2d at 534-35]. This works to prejudice the jurors against the accused, either consciously or unconsciously and, thus, denies an accused her right to a fair trial under the Due Process Clause of the Fourteenth Amendment. Id. at 567-68 [1344-46, 533-34]. Given the inherent prejudice when a defendant is forced to appear before a jury in shackles, the Supreme Court has held that shackling a defendant during trial is unconstitutional and harmful unless -- unlike this case -- shackling is necessary to restrain an obstreperous defendant. Allen, 397 U.S. at 343-344 [90 S. Ct. 1060-61, 25 L. Ed. 2d at 358-60].

While it is true, as the State contends, that the AEDPA applies to shackling cases under Lockhart v. Johnson, Lockhart is clearly distinguishable from the facts of Ms. Dyas' case. In Lockhart, 104 F.3d 54 (5th Cir.), cert. denied, 117 S. Ct. 2518 (1997), the Fifth Circuit upheld denial of habeas corpus relief where a defendant was shackled during trial and the defendant had previously tried to escape, had threatened to make trouble for

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1. For example, in Illinois v. Allen, the Supreme Court held that, in extreme cases, it may be necessary to restrain a defendant by binding and gagging him or her where the defendant is particularly difficult and disruptive. 397 U.S. at 344 [90 S. Ct. at 1061, 25 L. Ed. 2d at 359]. In Holbrook, the Supreme Court held that additional security officers did not deny petitioner a fair trial as there was a chance that the jurors would not have known that a particular number of guards was unusual. Holbrook, 475 U.S. at 569 [106 S. Ct. at 1346, 89 L. Ed. 2d at 534-35]. Holbrook drew a clear distinction between the presence of additional security officers and forcing an accused to wear prison clothes or shackles, which the Court stated were clearly unusual and likely to draw the jury's attention. Id. at 568-69 [1345-46, 534-35].

deputies who escorted him to the courthouse, and had responded during trial with outbursts of obscenities and had resisted officers who tried to restrain him. Clearly, Lockhart represent the type of obstreperous defendant envisioned as the exception to the rule enunciated in Illinois v. Allen. 397 U.S. at 343-344 [90 S. Ct. at 1060-61, 25 L. Ed. 2d at 358-60]. However, there was no showing of essential governmental interest in shackling Ms. Dyas before the jury, as the California Court of Appeal held on direct appeal. Holbrook v. Flynn held that shackling without a finding of extreme circumstances is inherently prejudicial in the same way as forcing a defendant to stand trial in prison clothes. 475 U.S. at 568-69 [106 S. Ct. at 1345-46, 89 L. Ed. 2d at 584].

Thus, the federal law, as determined by the Supreme Court of the United States, is clearly established on the issue of shackling a defendant during trial. Shackling a defendant without sufficient reason is analogous to forcing a defendant to wear prison clothes and, thus, is inherently prejudicial and unconstitutional.

C. The State Court Decisions Upholding Ms. Dyas' Conviction Are Contrary To Or Involve An Unreasonable Application of Clearly Established Federal Law.

As the California Court of Appeal determined on Ms. Dyas' direct appeal, the trial court erred in shackling Ms. Dyas. There was simply no justification for the shackling and, indeed, the State has not attempted to argue in the Court of Appeal or before this Court that there was a good reason to shackle her. In contending that the petition should be denied, the State merely points to the Court of Appeal's decision on direct appeal. That, in turn, was based upon the trial judge's ex ante "impression" that jurors would not see her shackles. Memorandum, Exhibit C at 141-142. The problem with this argument, though, is that the trial judge's pretrial impression was proved wrong by subsequent events at trial.

On habeas corpus in both California and federal courts, Ms. Dyas has presented compelling and unrebutted evidence that jurors did in fact see the shackles. Jurors saw the shackles in the courtroom. They also saw the shackles as Ms. Dyas was marched down the

courthouse hallway. Memorandum, Exhibits B-4, B-5 at 118-123. The State tries to ignore this evidence, but the evidence must be acknowledged and accepted.

The state courts' decisions are contrary to, or are unreasonable applications of, clearly established federal law. In ruling upon Ms. Dyas' habeas corpus petitions, the state courts summarily denied relief, without rejecting the undisputed evidence that jurors saw the shackles. Taken, as they must be, as decisions on the merits of her claims, these state court decisions erroneously deny habeas corpus relief where (a) there was no reason to shackle Ms. Dyas, and (b) the undisputed evidence shows that jurors saw the shackles. As set forth below, Ms. Dyas thus meets each of the first two prongs of §2254(d)(1).

1. The State Court Findings That Shackling Ms. Dyas Throughout Her Trial And Marching Her Down the Hallway In Front Of Jurors Was Harmless Error Was Contrary To Clearly Established Federal Law.

Ms. Dyas prevails under the first prong of the amended §2254(d)(1). The state courts' rulings were contrary to clearly established federal law. The issue here is a pure question of law. The question before this Court is whether the state courts erred in finding no inherent prejudice where the undisputed facts show jurors saw Ms. Dyas shackled during the trial and marched down the hallway. The standard is purely legal: "whether 'an unacceptable risk is presented of impermissible factors coming into play.'" Holbrook, 475 U.S. at 570 [106 S. Ct. at 1346-47, 89 L. Ed. 2d at 535-36] (quoting Williams, 425 U.S. at 505 [96 S. Ct. at 1693, 48 L. Ed. 2d at 131]). Thus, under Jeffries, the question is reviewed de novo. 114 F.3d at 1500.

Analyzing the legal issue of shackling de novo under the Jeffries standard, it is clear that Ms. Dyas was deprived of her right to a fair trial. In Ms. Dyas' case, the trial court judge incorrectly applied the law. The trial court decided to shackle Ms. Dyas based on the severity of the charges pending against her and nothing more. Memorandum, Exhibit C at 142. The California Court of Appeal held that shackling Ms. Dyas was error.

Memorandum, Exhibit B-1 at 91. At the same time, the Court of Appeal also held that the error was "harmless," based on the limited ex ante impression of the trial court judge that the jurors probably would not be able to see Ms. Dyas in shackles inside the courtroom. Id. at 92-93.

Ms. Dyas presented undisputed evidence as part of her state and federal habeas corpus petitions that the jurors saw her in shackles while she was in court and while she was marched down the courthouse hallway before court convened and re-convened. Ms. Dyas' habeas corpus petitions were, nevertheless, denied by the state courts in summary, postcard denials. The denial by the California Supreme Court was unadorned and stated no reason whatsoever. As the U.S. Supreme Court has noted, summary denials in the California Supreme Court may actually not reflect any reason for a decision: "Indeed, sometimes the members of the court issuing an unexplained order will not themselves have agreed on its rationale, so that the basis of the decision is not merely undiscoverable but nonexistent." Ylst v. Nunnemaker, 501 U.S. 797 [111 S. Ct. 2590, 2594, 115 L. Ed. 2d 706] (1991). It is uncertain just why the state courts denied Ms. Dyas' habeas corpus petitions; since the State has not contended that there was a reason to shackle Ms. Dyas, possibly the state courts denied habeas corpus relief under some theory that her shackling was harmless. But what is certain is that the state courts' denials were contrary to clearly established federal law.

It is clearly established that forcing a defendant to stand trial in shackles, absent an essential governmental interest prejudices the accused and deprives her of her right to a fair trial under the Due Process Clause of the Fourteenth Amendment to the Constitution. Here, Ms. Dyas presented undisputed evidence that the jurors saw her in shackles. The Court of Appeal already held that shackling Ms. Dyas was an abuse of discretion since there was no countervailing governmental interest. The Supreme Court has clearly held that shackling a defendant without an essential governmental interest is equivalent to forcing a defendant to wear prison clothes during trial and, thus, is inherently prejudicial. Shackling a defendant in sight of jurors does create an unacceptable risk of "impermissible factors coming into play," as held in Holbrook and Allen. Consequently, where the record shows

that jurors saw the shackles, the state courts' denials of Ms. Dyas' habeas corpus petitions are contrary to established federal law as determined by the Supreme Court. See Holbrook, 475 U.S. at 568-569 [106 S. Ct. at 1345-46, 89 L. Ed. 2d at 534-35].

Ms. Dyas is therefore entitled to relief under the first clause of §2254(d)(1).

2. The State Courts' Findings That Shackling Ms. Dyas Throughout Her Trial And Marching Her Down The Hallway In Front Of Jurors Was Harmless Error Involved An Unreasonable Application Of Clearly Established Federal Law.

If the inherently prejudicial nature of shackling a defendant during trial is determined not to be a pure question of law, it should be deemed a mixed question of law and fact. Whether the jurors' sustained opportunity to see the shackles gives rise to inherent prejudice is either a pure question of law or an application of law to fact. Ms. Dyas still prevails under the second prong of §2254(d)(1).

In deciding whether a state court's application of law is "unreasonable," a federal court should assess "the care with which the state court considered the subject." Lindh, 96 F.3d at 871; see also, Jeffries, 114 F.3d at 1500 (quoting Lindh). "A responsible, thoughtful answer reached after a full opportunity to litigate is adequate to support the judgment." Id.

The State concedes, as it must, that the postcard denials of Ms. Dyas' petition were decisions on the merits. See Answer, pp 18-19. Those postcard denials can hardly be categorized as thoughtful, reasoned opinions. The California Supreme Court provided no reason at all for denying relief and, as set forth in Ylst v. Nunnemaker, there may not even be agreement among the justices on the reasons for denying relief. Consequently, the state courts provided no real justification, much less a "responsible, thoughtful answer" for denying Ms. Dyas' petitions.

In the case at hand, the state courts' rulings are unreasonable applications of federal

law as determined by the Supreme Court of the United States. On habeas corpus, the state courts ignored the clear, undisputed record that jurors did indeed see Ms. Dyas in shackles. Ms. Dyas had made a record of prejudice unrebutted by the State. The state courts did not provide thoughtful, reasoned opinions explaining how they could simply ignore the evidence that jurors saw the shackles. Thus, the state courts unreasonably applied federal law when they denied Ms. Dyas' petitions for habeas corpus. As the Supreme Court found in Illinois v. Allen, such inherently prejudicial practices are unconstitutional. 397 U.S. 337, 344 [90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353, 359] (1970).

Consequently, Ms. Dyas is entitled to relief under the second prong of §2254(d)(1).

D. The State Court Decisions Upholding Ms. Dyas' Conviction Resulted In A Decision That Was Based On An Unreasonable Determination Of The Facts In Light Of The Evidence Presented In The State Court Proceeding.

Ms. Dyas has already explained that the state court decisions were based upon constructions of the law, rather than determinations of the facts. Ms. Dyas need not, therefore, show that the state courts' habeas corpus rulings represented unreasonable determinations of the facts. Yet, even if this Court were to view the state courts' decisions as fact-based, Ms. Dyas' petition should still be granted under §2254(d)(2).

As already noted, it is unclear just why the state courts denied Ms. Dyas' habeas corpus petitions. The State argues before this Court that the shackling was harmless, pointing solely to the determinations of the Court of Appeal on direct appeal. In so doing, the State entirely ignores the evidence presented along with Ms. Dyas' habeas corpus petitions. If the state courts denied the habeas corpus petitions under the same sort of reasoning, their decisions represent an unreasonable determination of the facts in light of the evidence presented in state court.

Ms. Dyas presented credible and compelling evidence that the jurors did indeed see her shackled. This evidence was not challenged in state court and the State does not now

introduce any declarations or other exhibits to challenge that evidence. Furthermore, the record from Ms. Dyas' trial is clear that her attorney brought the fact that jurors did indeed see her in shackles outside the courtroom to the attention of the court. Memorandum, Exhibit C at 139-140. In the absence of any evidence to the contrary, it would have been unreasonable for the state courts on habeas corpus to summarily find that the jurors did not see the shackles and that the error was harmless.

This type of error is similar to the situation in Jeffries, where the Washington Supreme Court based its denial of a petition for a writ of habeas corpus on an incorrect factual finding disputed by the record. Jeffries, 114 F.3d at 1500. In Jeffries, the Ninth Circuit held en banc that because the Washington Supreme Court's decision hinged on an incorrect factual finding, relief was not barred by AEDPA. Id. Similarly, in Ms. Dyas' case, the undisputed record demonstrates that the trial court's finding and subsequent reliance by the Court of Appeal were based on an incorrect factual finding. Ms. Dyas' trial counsel indicated that Ms. Dyas was marched in front of jurors in shackles several times a day. Memorandum, Exhibit C at 139-140. This reference, made by trial counsel, was in addition to the opportunity the jury had to see Ms. Dyas in shackles inside the courtroom. Id. The trial judge in Ms. Dyas' case did not address the issue that Ms. Dyas was exposed to jurors while in shackles outside the courtroom, although the record is clear that Ms. Dyas' attorney mentioned it to the judge. In addition, Ms. Dyas presented uncontroverted independent evidence in her habeas corpus petitions filed in state court that jurors saw Ms. Dyas in shackles outside the courtroom. Memorandum, Exhibits B-4, B-5 at 118-23.

In spite of the clear record that jurors did indeed see Ms. Dyas shackled, the Court of Appeal found the error harmless on direct appeal. The Court of Appeal based this decision on the pretrial impression of the trial judge that jurors probably could not see Ms. Dyas in shackles. Memorandum, Exhibit B-1 at 93. The postcard denials from the state courts on habeas corpus may have been based upon the ruling of the Court of Appeal. However, clear evidence was presented on habeas corpus, supported by the trial record, that the jurors did see Ms. Dyas in shackles. Thus, the finding of the Court of Appeal and any

reliance on that finding by the state courts on habeas corpus would be an incorrect and unreasonable factual determination. Consequently, as was the situation in Jeffries, relief is not barred by AEDPA in Ms. Dyas' case. Ms. Dyas is entitled to relief under 28 U.S.C. §2254(d)(2).

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CONCLUSION

For the foregoing reasons, petitioner, Rhonda Dyas, respectfully requests that this Court grant her petition for writ of habeas corpus. Alternatively, Ms. Dyas asks that this Court convene an evidentiary hearing on the issue of shackling.

Dated: March 13, 1998

Respectfully submitted,

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